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maintain a depot is one about which there is an apparent conflict of authority. In *Texas & Pacific Ry. Co.* v. *Marshall,* 136 U. S. 393, it was held that eight years was a sufficient length of time to satisfy the terms of the contract. No facts appeared showing that the public would be injuriously affected by a further maintenance of the depot. The prevailing rule, however, seems to be that a railroad, to perform its covenant, must maintain a depot until it is evident that further maintenance would injuriously affect the interest which the public has in the railroad. See *Taylor* v. *Florida East Coast Ry.,* 54 Fla. 635, 45 So. 574. Dictum to this effect is found in *Atlanta & West Point Ry. Co.* v. *Camp,* 130 Ga. 1, 15 L. R. A. (N. S.) 594; and in *Texas & Pacific Ry.* v. *Scott,* 77 Fed. 726, 23 C. C. A. 424, these cases holding that a railroad need not maintain a depot when the public would be thereby injuriously affected. *Wallace* v. *Gt. Western Ry. Co.,* 3 Ont. App. Rep. 44, holds that, in order to satisfy a covenant, a depot must be maintained for more than two years. *Jessup* v. *Grand Trunk Ry.,* 28 Grant Ch. 583, appears to hold that in the case of the sort of covenants in question the depot must be maintained permanently. However, this case presents no facts which would justify a contrary decision upon the ground that, by further maintenance of the station, the public would be injured.

TORTS—NON-LIABILITY OF CHARITABLE INSTITUTION.—X was adjudged insane and committed to a charitable institution maintained by the state for the care and treatment of its poor and indigent insane. He escaped from the institution and later was found dead in East River. His administratrix brings suit based on the negligence of defendant's agents in allowing intestate to escape. The trial court dismissed the claim on the ground that there was not sufficient proof of neglect on the part of the hospital or hospital authorities. On appeal, the Supreme Court *held* that, even though the physicians and surgeons attending the patient were negligent, the state was not liable because no agency exists, where it had used due care in selecting the employees. *Smith* v. *State* (1915), 154 N. Y. Supp. 1003.

In *Horden* v. *Salvation Army,* 199 N. Y. 223, the court said it was the settled rule that a charitable hospital—as distinguished from one operated for profit—is not liable for the negligence of its physicians and nurses in the treatment of patients. Accord, *Collins* v. *N. Y. Post-Graduate Medical School and Hospital,* 59 App. Div. 63; *Bruce* v. *Central M. E. Church,* 147 Mich. 230; *Union Pac. Ry. Co.* v. *Artist,* 60 Fed. 365; *Hearns* v. *Waterbury Hospital,* 66 Conn. 98; *Powers* v. *Mass. Homeo. Hospital,* 109 Fed. 294. This exemption has been placed on two grounds. First, on the ground of implied waiver, it is said that one who accepts the benefit of a charity enters into a relation which exempts one's benefactor from liability for negligence of his servants in administering the charity. Cases go further and hold, even though the patient makes some payment to help defray the cost of board, the hospital is exempt from liability. *McDonald* v. *Mass. General Hospital,* 120 Mass. 432; *Downes* v. *Harper Hospital,* 101 Mich. 555. Second, on the ground that the relation between the hospital and the physicians who serve it is not one of master and servant, but that the physician occupies the posi-

tion of an independent contractor, liable for his own wrongs to the patient, whom he undertakes to care for, but involving the hospital in no liability if due care has been taken in his selection. *Schloendorff* v. *N. Y. Hospital,* 211 N. Y. 125. The latter ground is supported by the great weight of authority in that the only negligence the charitable corporation can be charged with is that involved in the selection of its servants. *Patrol* v. *Boyd,* 120 Pa. 624; *Noble* v. *Hahnemann Hospital of Rochester,* 98 N. Y. Supp. 605; *Eighmy* v. *Union Pac. Ry. Co.,* 93 Ia. 538; *Williams* v. *Louisville Ind. School of Reform,* 95 Ky. 251; *Perry* v. *House of Refuge,* 63 Md. 20; *Murtaugh* v. *City of St. Louis,* 44 Mo. 620; *Richardson* v. *Carbon Hill Coal Co.,* 6 Wash. 52. See also, 5 MICH L. REV. 552-9, 662-65. Contra, *Glavin* v. *Rhode Island Hospital,* 12 R. I. 411 (not authority in Rhode Island, since Gen. Laws of R. I. (1896), p. 538, 539). *Kellog* v. *Church Foundation of Long Island,* 112 N. Y. Supp. 566, sometimes cited contra, is not really so, since it recognizes, as does the principal case, that a hospital is not liable for the acts of physicians, nurses, and attendants, but holds that there is a liability for acts of its servants, such as the driver of an ambulance.

WILLS—CAPACITY OF BLIND MAN.—A blind man, desirous of making his will, called in a friend to write it; upon completion it was read over to the testator as a whole, he expressed himself as satisfied with the result and signed the will in the following manner: the will was placed on his lap and the person who had written the will, holding the pen, guided the hand of the testator while he made his mark; then the writer of the will, together with another who had been summoned as a witness, placed the will on the table about four feet away from the testator and signed as subscribing witnesses. *Held,* in a proceeding to contest the will on the ground that it was not subscribed in the presence of the testator, that a blind man could make a valid will and that the above circumstances showed a sufficient signing in the presence of the testator, since his intellect and hearing remained unimpaired, and he was conscious of what was going on around him. *In re Allred's Will* (N. C. 1915), 86 S. E. 1047.

In early times the courts were inclined to give a restricted meaning to the statutory requirement "in the presence of the testator," arguing that it meant "in the sight of or within the scope of the vision." The result of such a construction operated to prevent a blind man from making a will. A broader and more liberal construction followed, until now it is well settled that a blind man may know of the presence of the witnesses without sight and that he may make a valid will. *Bynum* v. *Bynum,* 33 N. C. 632; *Ray* v. *Hill,* 3 Strob. (S. C.) 297, 49 Am. Dec. 647; *Goods of Piercy,* 1 Rob. Ecc. 278 Abbott 330; *Reynolds* v. *Reynolds,* 1 Speers (S. C.) 253, 40 Am. Dec. 599; *Riggs* v. *Riggs,* 135 Mass. 238, 46 Am. Rep. 464. These cases all emphasize the point that the superintending control usually exercised by sight, must be transferred to the other senses. The above principle was adhered to in *State* v. *Martin,* 2 La. Ann. 667, sustaining the will of Francois Martin, who was a member of the Supreme Court of Louisiana for thirty-one years, the last eight of which he was totally blind. See UNDERHILL, WILLS, § 196.